IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.87 OF 2007
Along with
Civil Application No.191 OF 2007

Jagannath Eknath Sapkale
and ors., .. Appellants
(Orig.Defts.)

Vs

Shri Subhash Kisan Sapkal
and ors. .. Respondents.

(No.1-Orig.Plff
and defts)

Mr P.B.Shah, for the appellants.

CORAM : **D.B.BHOSALE,J.**
DATE : 12/03/2007
PC:

1. Heard the learned counsel for the appellants.

2. Leave to amend. Amendment to be carried out forthwith.

3. This appeal by the original defendants is directed against the concurrent judgments of the courts below, by which a suit instituted by the respondent-plaintiff for partition and separate possession of his share in the joint family property, stands decreed. Mr Shah, learned counsel for the appellants, advanced his submissions only on one issue, whether the plaintiff-Subhash has proved that his father Kisan was the son of Ekanath Tatyaba Sapkal from his

first wife Khasubai. Ekanath, according to the plaintiff, had two wives, namely, Khasubai and Lochanabai. The defendants are the children of Ekanath from his wife Lochanbai, whereas the plaintiff claims to be the son Kisan, that is, the son of Khasubai and Ekanath. Against the backdrop of this relationship the plaintiff claims share in the property left by Ekanath.

4. Mr Shah, learned counsel for the appellants, vehemently submitted that the findings recorded by the courts below on the aforesaid issue, are perverse. He invited my attention to the oral evidence of PW 1 Subhash, PW 5 Hirabai, mother-in-law of Subhash and PW 8 Devidas, Accountant, working in Sugar Factory where Kisan was working. He submitted that Subhash did not give particulars or produce a documentary evidence on record, such as voters list, birth certificate, school leaving certificate, and marriage invitation card in support of his claim that he is the grand son of Ekanath, nor did the service record of Kisan produced by him on record supports his claim. P.W.5 Hirabai, according to Mr Shah, did not furnish the particulars of the parents of Subhash and, therefore, the findings based on the evidence of these witnesses examined by the plaintiff is perverse. He then invited my attention to the evidence of PW 8 contending that the original

service record where Kisan was working, has not been proved by the plaintiff. In short, Mr Shah submitted that in the absence of evidence, such as, voters list, birth certificate, school leaving certificate and marriage invitation card, the courts below ought not to have relied upon the other evidence, such as, the testimonies of eight witnesses examined by the plaintiff and the documentary evidence produced on record, mainly, in the form of service record to hold that Subhash is the grand son of Ekanath and the son of Ekanath's son Kisan. He lastly submitted that even if it is assumed that Kisan is the son of Ekanath, he cannot be treated as legitimate son of Ekanath and, therefore, at the most he will be entitled for share only in the self-acquired property of Kisan.

5. I perused the judgments of the courts below. Both the courts have considered this point and have recorded the detailed reasons to hold that Subhash is the grand son of Ekanath and the son of Ekanath's son Kisan. Both the courts have considered the oral evidence of all the witnesses and the documentary evidence produced on record by the plaintiff as also the other circumstantial evidence as reflected in the impugned judgment which, according to me, is sufficient to sustain the findings recorded by the courts below.

Merely because the evidence, such as, birth certificate, voters list, school leaving certificate, marriage invitation card, is not produced on record, does not mean that the relationship between Subhash, Kisan and Ekanath does not stand proved. The oral evidence, service record and the other circumstantial evidence clearly demonstrate that Subhash is the son of Kisan and grand son of Ekanath and Khasubai. Insofar as his submission that Subhash is illegitimate son of Ekanath is concerned, such contention was not raised before the courts below and there is absolutely nothing on record in support of this contention and, therefore, the submission that Subhash being illegitimate son, is not entitled for share in the ancestral property, also deserves to be rejected. Considering the concurrent findings of facts and as I find sufficient material on record to sustain those findings and considering the extremely limited jurisdiction of this Court under section 100 of C.P.C to disturb the findings of fact, the second appeal fails and dismissed as such. As a consequence thereof, the civil application stands disposed of.

(D.B.BHOSALE,J.)